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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re K.B., a Person Coming Under the  
Juvenile Court Law.

B203537

(Los Angeles County  
Super. Ct. No. CK00678)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.M.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County. Albert J. Garcia, Commissioner. Reversed.

Harry Zimmerman for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and Aleen L. Langton, Deputy County Counsel, for Plaintiff and Respondent.

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At a combined jurisdictional/dispositional hearing, half-siblings K.B. and K.K. were declared dependents of the court pursuant to Welfare and Institutions Code section 300, subdivision (b)<sup>1</sup> and placed in foster care. The jurisdictional finding was based on the social worker's report that was received into evidence even though she was not present or available to testify. Under the facts of this case, the error was not harmless and we reverse.

## **FACTUAL AND PROCEDURAL BACKGROUND**

The daughter, K.B., born in 1992, had been a dependent child of the juvenile court from 1993 to early 2004. The son, K.K., was born in May 2007. At his birth, both he and his mother tested positive for methamphetamine. Erika Gooding, a DCFS emergency response social worker, interviewed mother on several occasions shortly after her son's birth. According to Gooding's report, in the first interview, the day after her son's birth, mother denied using methamphetamine, but admitted smoking marijuana daily. A friend gave her what she believed to be prescription Zoloft for four months before her son's birth to help her get over her own mother's death earlier in the year, and she used "about two hits" of ecstasy six weeks before delivery. Mother detailed a past history of cocaine abuse. Gooding also interviewed mother's life partner, who denied ever seeing mother abuse drugs.

Based on the above, DCFS detained the children and petitioned to declare them both dependents of the juvenile court. The detention report included a synopsis of Gooding's interviews with mother.

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<sup>1</sup> Welfare and Institutions Code section 300, subdivision (b) provides in pertinent part: "Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court . . . (b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of . . . the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse." Unless otherwise specified, all subsequent references are to the Welfare and Institutions Code.

After the detention hearing, mother met on several occasions with Nichelle Black, a DCFS dependency investigator. Mother admitting smoking cigarettes daily during her recent pregnancy, but denied any illicit drug use since 1994. Mother suggested the methamphetamine in her system was the likely result of cold medications she took before her son's birth. She adamantly denied telling Gooding that she used marijuana, Zoloft, and ecstasy while pregnant. The baby's father<sup>2</sup> and mother's life partner both denied ever seeing mother use illicit drugs. Mother refused to submit to random drug testing.

Black prepared the jurisdiction/disposition report, which incorporated her interviews with mother, daughter (who wanted to stay with mother), mother's life partner, and the baby's father. The report also included mother's now-disputed statements from Gooding's detention report and a comment from another social worker who had spoken with mother. The mother reiterated to Black that she believed the positive drug test was the result of her taking over-the-counter medication. The social worker's assessment was "that was not common."

In the jurisdiction/disposition report, Black opined that mother was not being truthful about her drug use. She recommended the juvenile court assume jurisdiction and order out-of-home placements for the children. Both Black and her supervisor signed the report.

The jurisdictional/dispositional hearing was scheduled for July 24, 2007. Gooding and Black were both present, as were the parents and their counsel. Mother's request for new counsel was granted, and the matter was continued for two weeks so the new attorney could review the file and DCFS could investigate the suitability of placing the baby with his father. The court asked mother's new attorney if Gooding or Black should be ordered to return, and she replied no.

When the matter was called on August 7, 2007, mother's counsel advised her client wanted "the worker" to testify. When asked which social worker, mother's counsel

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<sup>2</sup> The court would find him to be the baby's biological and presumed father.

identified Black. The court continued the matter to August 17, and ordered that Black, who was not present, appear on that date.

The August 17 hearing began with mother's request to represent herself. She submitted a written statement expressing her disagreement with her attorney's recommendations and admitted, "I realize that I am not qualified, but I refuse to be forced into a guilty plea, when I am not." A *Marsden* hearing was conducted, and the court denied mother's request.

Black failed to appear as ordered. Her absence was not announced on the record before DCFS offered five exhibits, including the jurisdiction/disposition report, into evidence. The documents were received without objection and DCFS rested.<sup>3</sup> Mother's counsel called Black's supervisor to the stand. She testified Black was on vacation. Although the supervisor signed the jurisdiction/disposition report, she did not write it and did not interview mother. The supervisor had, however, spoken with Gooding about her detention report. The supervisor was not asked if she had discussed the case with Black.

Without further questioning, Mother's counsel moved to exclude the jurisdiction/disposition report "because the mother does not have the ability to cross examine the actual preparer of the report." DCFS argued the court had already admitted the report into evidence without objection by mother's counsel. The court responded: "That's true. But assuming you did have a proper objection [at] the time of your request, your objection or request that it will not be received is denied."<sup>4</sup>

Mother testified she did not use methamphetamine while pregnant. She insisted the drug appeared in her system because of cold medications taken before delivery. According to mother, her physician told her the positive drug test "could have been an

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<sup>3</sup> DCFS also moved the following documents into evidence, all without objection from mother's counsel: (1) information for court officer dated July 24, 2007, (2) pre-release investigation dated June 21, 2007, (3) information for court officer dated August 17, 2007 with attached notices, and (4) information for court officer with attached toxicology screens dated August 17, 2007.

<sup>4</sup> Mother's counsel did not make "a timely objection to the admission of specific hearsay evidence" contained in the jurisdiction/disposition report. (§ 355, subd. (c)(1).)

error.”<sup>5</sup> Mother denied telling Gooding that she had used ecstasy, marijuana, and Zoloft while pregnant and accused Gooding of fabricating these statements. Mother only admitted telling Gooding she “used to do drugs 13 years ago.” Mother testified that she had a history of illicit drug use but maintained that she had been “clean and sober” since 1994, the year she was released from prison. During this pregnancy, mother testified she received prenatal care once every two weeks.

The court admitted into evidence the results of three drug tests taken by mother through laboratories of her choice seven and eight weeks after delivery. The tests were negative.

The court sustained the petition and found “by clear and convincing evidence that substantial danger exists to the physical and emotional health of the children.” The court declared the children dependents, removed them from mother’s custody, placed them under DCFS supervision, and ordered reunification services. The court ordered mother to complete a drug rehabilitation program with random testing, enter an aftercare program, and complete a parent education course. Subsequently, while mother was still represented by counsel, she filed on her own a motion for new trial and a motion to vacate the judgment. The court granted the motion by mother’s counsel to be relieved and denied the motions for new trial and to vacate the judgment.

## **DISCUSSION**

Although DCFS agrees mother’s appeal is timely and clearly presents issues that arose at the August 17, 2007 jurisdictional/dispositional hearing, it seeks dismissal for mother’s failure to identify the correct hearing date on the first page of the notice of appeal. “[I]t is, and has been, the law of this state that notices of appeal are to be

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<sup>5</sup> The court received a letter from mother’s physician into evidence. There, the doctor did not repeat the statement mother attributed to her. Instead, the physician wrote, “[mother] admits to smoking prior to delivery but is adamant that her methamphetamine exposure is spurious from use of cold medication. Patient had a toxicology screen on 05/16/2007.”

liberally construed so as to protect the right of appeal if it is reasonably clear what [the] appellant was trying to appeal from, and where the respondent could not possibly have been misled or prejudiced.’ [Citations.]” (*In re Joshua S.* (2007) 41 Cal.4th 261, 272.) Accordingly, we proceed to the merits of mother’s appeal.<sup>6</sup>

### **The Jurisdiction/Disposition Report Was Not Admissible**

Frequently, the jurisdictional hearing, where the court determines whether to declare the child a dependent of the juvenile court, and the dispositional hearing, where the court determines with whom the child will live while under court supervision, are combined. But the jurisdictional portion of the hearing is subject to different evidentiary rules: “The statutes clearly indicate legislative intent to treat the two phases of dependency proceedings differently. Under section 355, more stringent evidentiary requirements must be met at the jurisdictional hearing where the court initially intervenes and obtains jurisdiction over the child. At the subsequent dispositional phase, any relevant evidence including hearsay shall be admitted pursuant to section 358, subdivision (b) to help the court determine the child’s best interests.” (*In re Corey A.* (1991) 227 Cal.App.3d 339, 347.) The social worker’s report “is admissible at a jurisdictional hearing only if the preparer is made available for cross-examination.” (*Id.* at p. 346; § 355, subd. (b)(2).) As the *Corey* court noted, “Where statutory language is clear, there is no room for interpretation.” (*Id.* at p. 347.) The court erred in admitting the jurisdiction/disposition report for the jurisdictional phase of the proceedings.

While the due process violation here was of statutory, rather than constitutional, dimension, it compels reversal. The triggering event for the children’s detention was the baby’s testing positive for methamphetamine at birth; drug tests the following day on both mother and infant were negative for that substance. Given the initial positive drug test, it would be reasonable to assume the baby’s health and development were important factors for the court to consider. But the jurisdiction/disposition report noted only that

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<sup>6</sup> The baby’s father has not appealed. K.B.’s father never appeared in these proceedings.

“current medical information” for the baby was “unknown,” the foster mother had no health concerns for him, and he was “developing age appropriately.” Black did not appear to have investigated mother’s claim that the positive drug test was the result of cold medication she took in the days before her son’s birth other than to note in the report that another social worker remarked it “was not common” for over-the-counter cold medications to result in a positive methamphetamine test. In the report, Black faulted mother for not submitting to random drug testing through DCFS. She recommended the juvenile court assume jurisdiction over both children, concluding “the risk level” to them was high because mother “does not appear to have accepted responsibility for her actions and has not acknowledged that there are some serious concerns.” Given the perfunctory and conclusory nature of the report, we cannot say beyond a reasonable doubt that the court’s error in receiving it into evidence was harmless.<sup>7</sup> (*In re Dolly D.* (1995) 41 Cal.App.4th 440, 447.)

An additional observation is appropriate here. At oral argument, counsel for DCFS advised that it is common for the supervising dependency investigator to appear at contested hearings rather than the social worker who actually prepared the report. This is certainly appropriate in hearings other than the one where jurisdictional findings will be made. (See, e.g., *In re Jeanette V.* (1998) 68 Cal.App.4th 811, 815-817.) But if a timely request is made at the jurisdictional hearing to cross-examine the preparer of the report, a supervisor may not take the stand in place of the author.

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<sup>7</sup> As this error necessitates reversal, we do not address mother’s challenge to the sufficiency of the evidence.

The court also erred in refusing to permit mother to represent herself: While there is no constitutional right to self-representation in dependency proceedings, a parent does have a statutory right to self-representation under section 317. (*In re Angel W.* (2001) 93 Cal.App.4th 1074, 1082-1084.) In a dependency proceeding, “the court must respect the right of the parent to represent him[self] or herself as a matter of individual autonomy and avoid forcing the mentally competent parent to proceed with appointed counsel in the guise of protecting a person who is unskilled in the law and courtroom procedure.” (*Id.* at p. 1084.) The court did not make any findings concerning mother’s mental competency and appears instead to have denied the request because mother admitted she had no qualifications to act as her own attorney.

## **DISPOSITION**

The judgment is reversed and the matter is remanded for further proceedings.  
NOT TO BE PUBLISHED.

DUNNING, J.<sup>\*</sup>

We concur:

MALLANO, P. J.

ROTHSCHILD, J.

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<sup>\*</sup> Judge of the Orange County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.